

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 302 of)
the Telecommunications Act of 1996)
)
Open Video Systems)

CS Docket No. 96-48

96-46

REPLY COMMENTS OF THE STATE OF HAWAII

The State of Hawaii ("State"), through its Department of Commerce and Consumer Affairs, hereby replies to the comments filed on April 1, 1996, in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹ A division of the Department of Commerce -- the Cable Television Division (the "CATV Division") -- is the cable franchise administrator for all of Hawaii.

I. SUMMARY

The State strongly urges the Commission to adopt regulations which require each operator of an open video system ("OVS"), at a minimum, to match the PEG obligations of the cable operators with which it competes or to negotiate PEG obligations with the local cable administrator. Such a rule is essential to ensure that the significant benefits which PEG programming have brought to cable subscribers continue to reach the public as competition develops in the multichannel video programming market. The State also supports rules which

¹ Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, Report and Order and Notice of Proposed Rulemaking, CS Docket No. 96-46 and CC Docket No. 87-266, FCC 96-99 (released March 11, 1996).

protect traditional local interests in managing rights-of-way and in ensuring that consumers receive the full benefits of local competition.

II. INTRODUCTION

The Commission's NPRM solicits comment on how best to establish a regulatory framework for OVS. The State believes that a reasonable starting point is set forth in the joint initial comments of the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, Montgomery County, and several cities (hereinafter "Joint Commenters"). These comments identify several key principles that should be followed in order to protect significant local interests: (1) the Commission should entrust local administrators with sufficient authority over OVS PEG obligations to ensure that OVS operators meet local community needs and interests; (2) the OVS rules must contain strong nondiscrimination provisions so that OVS affords all programmers open and affordable access to OVS systems and so that such systems do not become de facto cable systems; (3) similarly, to preserve the competitive potential of OVS, incumbent cable operators must be prohibited from becoming OVS operators; and (4) the OVS rules must recognize local governments' legitimate interests concerning the management of rights-of-way.

The State supports each of these principles and urges the Commission to follow them in formulating its OVS rules. With regard to the second, third and fourth principles, the State generally endorses the Joint Commenters' position. So as to avoid unnecessary repetition, the State limits these reply comments to its experience in creating and implementing PEG obligations. In the NPRM, the Commission seeks comment on how PEG requirements are met

in different franchise areas.² These reply comments focus on how, in Hawaii, these critical local needs are, and should continue to be, met.

III. DISCUSSION

The Telecommunications Act of 1996 is clear with regard to OVS operators' PEG requirements. According to the Act, the Commission must establish PEG obligations that not only meet local needs and interests, but must ensure that the PEG obligations of OVS operators and those of cable operators are equivalent.³ To this end, the Joint Commenters propose that the Commission require OVS operators to match incumbent cable operators' PEG obligations, or to negotiate PEG obligations with the cable administrator for the relevant communities. The State supports this proposed "match or negotiate" rule.

Other comments in response to the NPRM clearly demonstrate that cable administrators play the role which Congress envisioned when it codified cable operators' PEG obligations. As franchising authorities, local administrators carefully assess their communities' needs and interests, and determine how to meet them.⁴ As one commenter notes, cable administrators obviously "are in the best position to deliver on the [Telecommunications] Act's intent to accomplish PEG access over open video systems."⁵

² See NPRM at ¶ 58.

³ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 123 (1996) (creating new Section 653(c)(1)(b) of the Communications Act).

⁴ See, e.g., Comments of the Below-Named Political Subdivisions of the State of Minnesota at 7 (franchising authorities have "considerable experience in successfully negotiating, creating and implementing...PEG obligations").

⁵ Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 33.

The State's experience in developing PEG requirements demonstrates the continued need for local control of this process. In Hawaii, requirements for PEG access operations, facilities and equipment are set by the CATV Division through cable franchise orders. At present, there are four cable operators authorized to provide cable services within the State. The cable operators hold a patchwork of franchises. Within each of the State's four counties, there are two cable operators providing service to noncontiguous franchise areas. Given the cultural and ethnic diversity of the various communities within the State's four counties, one of the CATV Division's primary goals is to establish, to the extent possible, continuity and parity of PEG obligations imposed on cable operators which provide service within the same county. A PEG access entity or organization has been designated within each county to operate and manage the PEG access resources and facilities provided by the cable operators to that county. To ensure fair distribution of PEG obligations, the CATV Division attempts to correlate the percentage of annual gross revenues designated for PEG access operations with the number of PEG access channels provided by each cable operator within the same county.

The CATV Division also goes through a comprehensive process in assessing and determining individual communities' needs for PEG access programming, facilities and equipment. The PEG access entities serving particular counties have varying needs for facilities and equipment. Accordingly, the CATV Division attempts to tailor the cable operator's contributions for PEG access facilities and equipment. The CATV Division also gauges, and is sensitive to, the affect which any increase in PEG access requirements would have on franchise fees which ultimately would be paid by subscribers.

It is essential to maintain this particular type of review and analysis in determining PEG access requirements for OVS providers. The process in Hawaii has been carefully crafted to suit the State's needs. The Joint Commenters' "match or negotiate" proposal will ensure that the State and other cable administrators can continue to address local interests in the manner in which Congress envisions.

IV. CONCLUSION

The State urges the Commission to adopt rules for OVS along the lines of the principles enunciated above and, in particular, that the Commission adopt a framework which ensures continued local administration over PEG access requirements.


Respectfully submitted,

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